

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NAIM RASOOL MUHAMMAD,
TDJC No. 999582

Petitioner,

v.

BOBBY LUMPKIN, Director, Texas
Department of Criminal Justice, Correctional
Institutions Division,

Respondent.

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Civil Action No. 3:21-CV-39-X-BK

DEATH-PENALTY CASE

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE AMENDED
PETITION FOR WRIT OF HABEAS CORPUS AND RELATED PLEADINGS**

COMES NOW Petitioner Naim Rasool Muhammad, by and through his undersigned counsel, who moves the Court to grant his request for an extension of sixty (60) days, or until Friday, July 15, 2022, to file his Amended Petition for Writ of Habeas Corpus, motion for evidentiary hearing, and/or motion for discovery. Respondent does not oppose the relief sought herein.

Muhammad filed his initial petition for habeas corpus on November 12, 2021. ECF No. 14. Pursuant to the current scheduling order, Muhammad's Amended Petition is due on May 16, 2022. This is Muhammad's first request for an extension of time to file his Amended Petition. Muhammad submits the following as good cause for granting the extension.

Despite due diligence, undersigned counsel will be unable to complete the Amended Petition by the current due date. The complexity of certain issues in this case, compounded by impediments to the investigation and co-counsel's maternity leave, have required more time than originally anticipated.

There was a state-court evidentiary hearing in this case, resulting in multiple days of testimony (including from four expert witnesses) and thousands of pages of exhibits. The volume of state materials has required substantial time to continue to digest. Additionally, the majority of relevant witnesses in this case are located in Texas, while counsel and their investigators are located in California. As a result, substantial travel has been necessary to investigate Muhammad's claims and obtain supporting evidence. That travel has continued to be complicated by the ongoing global COVID-19 pandemic. Undersigned counsel was appointed in February of 2021, at a time when the vast majority of Americans were not yet fully vaccinated against COVID-19,¹ travel and visitation restrictions were still in place across the country, and the risk of illness and death from COVID-19 was high. Several relevant witnesses, as well as some members of the legal team, were or are members of high-risk groups, delaying our ability to conduct "in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than death." ABA Guidelines, Guideline 10.11(C). These complications existed throughout the period of counsel's investigation before filing the initial petition and were compounded by the Omicron surge in late 2021 and early

¹ See American Journal of Managed Care, *A Timeline of COVID-19 Vaccine Developments in 2021* (June 3, 2021), available at <https://www.ajmc.com/view/a-timeline-of-covid-19-vaccine-developments-in-2021> (citing data that "close to 10% of the U.S. population was fully vaccinated by June 2021).

2022,² leaving substantial investigation to complete before the Amended Petition could be filed. The limited travel and delayed investigation have also impeded counsel's ability to finalize and get signed declarations supporting Muhammad's petition.

Undersigned counsel's additional obligations have also contributed to the need for an extension of time to file the Amended Petition. Attorney Emily Groendyke has been on maternity leave since December 24, 2021, after a pregnancy with substantial complications. She has worked on this case to the extent possible during her leave in light of the scheduling order. She will continue to do so to the extent that she is able if the Court grants an extension, and she expects to return to the office in early July.

Attorney Celeste Bacchi remains on the case, and has worked diligently since the filing of the initial Petition. However, she has had a number of other deadlines that have consumed much of her time over the last six months, including: a petition for writ of certiorari to the United States Supreme Court in a capital case, filed March 11, 2022; a brief in opposition to the state's motion to dismiss in a capital case in California state court, filed January 7, 2022; investigation and litigation for an initial 2255 motion in a capital case in the Western District of Texas; preparation for trial in the Central District of California, which was just recently continued from April 2022 to September 2022; and ongoing resentencing litigation in two capital cases in California state court. Ms. Bacchi is also the mentor and training attorney for her office's Capital Habeas Unit (CHU), and has been responsible for developing and presenting six trainings for new employees since January 2022. Finally, Ms. Bacchi was on bereavement leave during various periods in March and April due to the deaths of two family members from COVID-19.

² See The New York Times, *Tracking Coronavirus in Texas: Latest Map and Case Count*, available at <https://www.nytimes.com/interactive/2021/us/texas-covid-cases.html> (showing COVID-19 cases in Texas from March 2020 to the present).

This extension is made in order to allow counsel to provide constitutionally adequate representation for Muhammad, and not solely for the purpose of delay.

For the foregoing reasons, Muhammad respectfully requests this Court find good cause to grant his request for a 60-day extension, or until July 15, 2022, to file his Amended Petition for Writ of Habeas Corpus, motion for evidentiary hearing, and/or motion for discovery.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: May 13, 2022

By /s/ Emily Groendyke

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CERTIFICATE OF CONFERENCE

Counsel for Muhammad has conferred with opposing counsel, Ali Nassar of the Texas Attorney General's Office, and Mr. Nassar has indicated that the Director does not oppose this motion.

/s/ Emily Groendyke

EMILY J.M. GROENDYKE
Attorney for Petitioner